

involved in obtaining the opinion of a Navy-employed expert shall be borne by the command to which the expert is attached. Medical experts shall be employed only after consultation with the Chief, Bureau of Medicine and Surgery.

(j) *Action by command initiating the investigation and subsequent reviewing authorities.* (1) The command initiating the investigation in accordance with § 750.3 or § 750.5 shall review the report of investigation. If additional investigation is required or omissions or other deficiencies are noted, the investigation should be promptly returned with an endorsement indicating that a supplemental investigative report will be submitted. If the original or supplemental report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. An advance copy of the investigation shall be forwarded to the Naval Legal Service Command activity having territorial responsibility for the area where the incident giving rise to the claim occurred as indicated in § 750.34(c)(2)(ii).

(2) A reviewing authority may direct that additional investigation be conducted, if considered necessary. The initial investigation should not be returned for such additional investigation, but should be forwarded by an endorsement indicating that the supplemental material will be submitted. The report shall be endorsed and forwarded to the next-level authority with appropriate recommendations including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim that may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(3) It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) as implemented by 32 CFR part 701, subpart F. Any indication of noncompliance shall be explained either in the preliminary statement or the forwarding endorsements and, when required, corrected. The adjudicating Naval Legal Service Command activity listed in

§ 750.34(c)(2)(ii) has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

§ 750.4 Claims: In general.

(a) *Claims against the United States.* Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, a check issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial.

(b) *Claims in favor of the United States.* Potential claims in favor of the United States will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued.

(c) *Assistance to Claimants.* Claimants or potential claimants who inquire about their rights or the procedures to be followed in the resolution of their claims will be referred to a claims officer. The officer will provide claim forms, advise where the forms should be filed, and inform the requester of the type of substantiating information required. Claims officers may provide advice on the claims process but shall not provide advice or opinions about the merits or the wisdom of filing a particular claim. While claims officers have a responsibility to provide general information about claims, they must consider 18 U.S.C. 205 which makes it a crime for an officer or employee of the United States to act as an agent or an attorney in the prosecution of any claim against the United States.

§ 750.5 Claims: Proper claimants.

(a) *Damage to property cases.* A claim for damage to, or destruction or loss of, property shall be presented by the owner of the property or a duly authorized agent or legal representative. "Owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or

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other person having title for security purposes only.

(b) *Personal injury and death cases.* A claim for personal injury shall be presented by the person injured or a duly authorized agent or legal representative, or, in the case of death, by the properly appointed legal representative of the deceased's estate or survivor where authorized by State law.

(c) *Subrogation.* A subrogor and a subrogee may file claims jointly or separately. When separate claims are filed and each claim individually is within local adjudicating authority limits, they may be processed locally, even if the aggregate of such claims exceeds local monetary jurisdiction, if they do not exceed the sum for which approval of the Department of Justice is required (currently, \$100,000.00) under the Federal Tort Claims Act. Where they exceed this amount, they shall be referred to the Claims and Tort Litigation Division.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.6 Claims: Presentment.

(a) *Written demand and Standard Form 95.* A claim shall be submitted by presenting a written statement with the amount of the claim expressed in a sum certain, and, as far as possible, describing the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, shall be used whenever practical for claims under the Federal Tort and Military Claims Acts. Claims under the

Personnel Claims Act shall be submitted on DD Form 1842. The claim and all other papers requiring the signature of the claimant shall be signed by the claimant personally or by a duly authorized agent. If signed by an agent or legal representative, the claim shall indicate the title or capacity of the person signing and be accompanied by evidence of appointment. When more than one person has a claim arising from the same incident, each person shall file a claim separately. A subrogor and a subrogee may file a claim jointly or separately.

(b) *To whom submitted.* Claims under the Federal Tort and Military Claims Acts shall be submitted to the commanding officer of the Navy or Marine Corps activity involved, if known. Otherwise, they shall be submitted to the commanding officer of any Navy or Marine Corps activity, preferably the one nearest to where the accident occurred, the local Naval Legal Service Command activity, or to the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400.

§ 750.7 Claims: Action by receiving command.

(a) *Record date of receipt.* The first command receiving a claim shall stamp or mark the date of receipt on the letter or claim form. The envelope in which the claim was received shall be preserved.

(b) *Determine the military activity involved.* The receiving command shall determine the Navy or Marine Corps activity most directly involved with the claim—usually the command where the incident is alleged to have occurred—and forward a copy of the claim to that activity. The original claim (and the transmittal letter, if a copy is forwarded to a more appropriate activity) should immediately be sent to the servicing Naval Legal Service Command activity claims office.

(c) *Initiate an investigation.* An investigation under this part shall be commenced immediately by the command most directly involved with the claim. Once the investigation has been completed, an advance copy shall be forwarded by the convening authority to

the Naval Legal Service Command activity providing claims support. Waiting until endorsements have been obtained before providing a copy of the investigation to the cognizant claims adjudicating authority is neither required nor desirable. The facts of the incident must be made known to cognizant claims personnel as soon as possible.

§ 750.8 Claims: Responsibility of the adjudicating authority.

(a) *Reviewing prior actions.* The adjudicating authority determines whether an adequate investigation has been conducted, whether the initial receipt date is recorded on the face of the claim, and whether all holders of the investigation, if completed, are advised of the receipt of the claim.

(b) *Determining sufficiency of the claim.* The claim should be reviewed and a determination of its sufficiency made. If the claim is not sufficient as received, it shall be returned to the party who submitted it along with an explanation of the insufficiency. This does not constitute denial of the claim. The claim shall not be considered “presented” until it is received in proper form.

(c) *Adjudicating the claim.* (1) The adjudicating authority shall evaluate and either approve or disapprove all claims within its authority, except where the payment of multiple Federal Torts Claims Act claims arising from the same incident will exceed \$100,000.00 in the aggregate and thereby require approval of the Department of Justice. In this latter instance, the claims and the investigative report shall be forwarded to the Judge Advocate General for action.

(2) The adjudicating authority shall evaluate and, where liability is established, attempt to settle claims for amounts within its adjudicating authority. Permission of higher authority to conduct settlement negotiations to effect such settlements is not necessary. Negotiation at settlement figures above the adjudicating authority’s payment limits may be attempted if the claimant is informed that the final decision on the claim will be made at a higher level.

(3) If a claim cannot be approved, settled, compromised, or denied within

the adjudicating authority limits established in this instruction, the claim shall be referred promptly to the Judge Advocate General. The following materials shall be forwarded with the claim:

(i) An official endorsement or letter of transmittal containing a recommendation on resolution of the claim.

(ii) A memorandum of law containing a review of applicable law, an evaluation of liability, and recommendation on the settlement value of the case. This memorandum should concentrate on the unusual aspects of applicable law, chronicle the attempts to resolve the claim at the local level, provide information about the availability of witnesses, and outline any other information material to a resolution of the claim, i.e. prior dealings with the claimant’s attorney, local procedural rules, or peculiarities that may make trial difficult. The memorandum should not repeat information readily obtained from the investigative report and should be tailored to the complexity of the issues presented. An abbreviated memorandum should be submitted if the claim is statutorily barred because of the statute of limitations or Federal Employees’ Compensation Act or otherwise barred because of the *Feres* doctrine.

(iii) The original investigative report and all allied papers.

(iv) The original claim filed by the claimant (and the envelope in which it arrived, if preserved). The adjudicating authority shall retain at least one copy of all papers forwarded to the Judge Advocate General under this section.

(d) *Preparing litigation reports.* A litigation report is prepared when a lawsuit is filed and a complaint received. The report is addressed to the Department of Justice official or the U.S. Attorney having cognizance of the matter. The report is a narrative summary of the facts upon which the suit is based and has as enclosures the claims file and a memorandum of law on the issues presented.

(1) When the claim has been forwarded to the Judge Advocate General prior to the initiation of a suit, litigation reports originate in the Claims and Tort Litigation Division of the Office of the Judge Advocate General.

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(2) When, however, the claim has not been forwarded and is still under the cognizance of the Naval Legal Service Command claims office, that command will ordinarily be required to prepare and forward the litigation report to the requesting organization. In this instance, the litigation report should be sent directly to the cognizant Department of Justice official or U.S. Attorney with a copy of the report and all enclosures to the Judge Advocate General.

§ 750.9 Claims: Payments.

Claims approved for payment shall be expeditiously forwarded to the disbursing office or the General Accounting Office depending on the claims act involved and the amount of the requested payment. Generally, payment of a Federal tort claim above \$2,500.00 requires submission of the payment voucher to the General Accounting Office. All other field authorized payment vouchers are submitted directly to the servicing disbursing office for payment.

§ 750.10 Claims: Settlement and release.

(a) *Fully and partially approved claims.* When a claim is approved for payment in the amount claimed, no settlement agreement is necessary. When a federal tort, military, or non-scope claim is approved for payment in a lesser amount than that claimed, the claimant must indicate in writing a willingness to accept the offered amount in full settlement and final satisfaction of the claim. In the latter instance, no payment will be made until a signed settlement agreement has been received.

(b) *Release.* (1) Acceptance by the claimant of an award or settlement made by the Secretary of the Navy or designees, or the Attorney General or designees, is final upon acceptance by the claimant. Acceptance is a complete release by claimant of any claim against the United States by reason of the same subject matter. Claimant's acceptance of an advance payment does not have the same effect.

(2) The claimant's acceptance of an award or settlement made under the provisions governing the administrative settlement of Federal tort claims

or the civil action provisions of 28 U.S.C. 1346(b) also constitutes a complete release of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.11 Claims: Denial.

A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail with return receipt requested. The denial notification shall include a statement of the reason or reasons for the denial. The notification shall include a statement that the claimant may:

(a) If the claim is cognizable under the Federal Tort Claims Act, file suit in the appropriate United States District Court within 6 months of the date of the denial notification.

(b) If the claim is cognizable under the Military Claims Act, appeal in writing to the Secretary of the Navy within 30 days of the receipt of the denial notification. The notice of denial shall inform the claimant or his representative that suit is not possible under the Act.

§ 750.12 Claims: Action when suit filed.

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b)), of any action against the United States and involving the Navy, that comes to the attention of any official in connection with his official duties, shall be reported immediately to the commanding officer of the servicing Naval Legal Service Command activity who shall take any necessary action and provide prompt notification to the Judge Advocate General. The commencement of a civil action against an employee of the Navy for actions arising from the performance of official duties shall be reported in the same manner.

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice or other source that a civil action involving the Navy has been initiated under the civil action provisions of the Federal Tort

Claims Act, and there being no investigative report available at the headquarters, a request shall be made to the commanding officer of the appropriate Naval Legal Service Command activity for an investigative report into the incident. If there is not a completed investigation, the request shall be forwarded to the appropriate naval activity to convene and complete such a report. The commanding officer of the Naval Legal Service Command activity shall determine whether an administrative claim had been filed and, if available information indicates none had, advise the Office of the Judge Advocate General (Claims and Tort Litigation Division) immediately.

§ 750.13 Claims: Single service responsibility.

(a) The Department of Defense has assigned single-service responsibility for processing claims in foreign countries under the following acts. The service and country assignments are in DODDIR 5515.8 of 9 June 1990.¹

(1) Foreign Claims Act (10 U.S.C. 2734);

(2) Military Claims Act (10 U.S.C. 2733);

(3) International Agreements Claims Act (10 U.S.C. 2734a and b), on the pro-rata cost sharing of claims pursuant to international agreement;

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements;

(5) Medical Care Recovery Act (42 U.S.C. 2651-2653) claims for reimbursement for medical care furnished by the United States;

(6) Nonscope Claims Act (10 U.S.C. 2737), claims not cognizable under any other provision of law;

(7) Federal Claims Collection Act of 1966 (31 U.S.C. 3701); the Act of June 1921 (31 U.S.C. 3702), claims and demands by the U.S. Government; and

(8) Public Law 87-212 (10 U.S.C. 2736), advance or emergency payments.

(b) Single service assignments for processing claims mentioned above are as follows:

(1) *Department of the Army*: Austria, Belgium, El Salvador, France, the Federal Republic of Germany, Grenada, Honduras, Korea, the Marshall Islands, and Switzerland and as the Receiving State Office in the United States under 10 U.S.C. 2734a and 2734b and the NATO Status of Forces Agreement, and other Status of Forces Agreements with countries not covered by the NATO agreement.

(2) *Department of the Navy*: Bahrain, Iceland, Israel, Italy, Portugal, and Tunisia.

(3) *Department of the Air Force*: Australia, Azores, Canada, Cyprus, Denmark, Greece, India, Japan, Luxembourg, Morocco, Nepal, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, the United Kingdom, Egypt, Oman, and claims involving, or generated by, the U.S. Central Command (CENTCOM) and the U.S. Special Operations Command (USSOC), that arise in countries not specifically assigned to the Departments of the Army and the Navy.

(c) *U.S. forces afloat cases under \$2,500.00*. Notwithstanding the single service assignments above, the Navy may settle claims under \$2,500.00 caused by personnel not acting within the scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims.

§§ 750.14—750.20 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.21 Scope of subpart B.

This subpart provides information regarding the administrative processing and consideration of claims against the United States under the FTCA. The FTCA is a limited waiver of sovereign immunity. Under the FTCA, an individual can seek money damages for personal injury, death, or property damage caused by the negligent or wrongful act or omission of a Federal employee acting within the scope of employment. The FTCA also provides for compensation for injuries caused by certain intentional, wrongful conduct.

¹Copies may be obtained if needed, from Commanding Officer, U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

The liability of the United States is determined in accordance with the law of the State where the act or omission occurred.

§ 750.22 Exclusiveness of remedy.

(a) The Federal Employees Liability Reform and Tort Compensation Act of 1988, Public Law 100-694 (amending 28 U.S.C. 2679(b) and 2679(d)), provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all Federal employees, acting within the scope of their employment, will be against the United States. This immunity from personal liability does not extend to allegations of constitutional torts, nor to allegations of violations of statutes specifically authorizing suits against individuals.

(b) Other statutory provisions create immunity from personal liability for specific categories of Federal employees whose conduct, within the scope of their employment, gives rise to claims against the Government. Department of Defense health care providers are specifically protected by 10 U.S.C. 1089, the Gonzalez Act. DOD attorneys are specifically protected by 10 U.S.C. 1054.

§ 750.23 Definitions.

(a) *Negligent conduct.* Generally, negligence is the failure to exercise that degree of care, skill, or diligence a reasonable person would exercise under similar circumstances. Negligent conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government. 28 U.S.C. 1346(b) and 2674.

(b) *Intentional torts.* Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An "investigative or law enforcement officer" is any officer of the United States empowered by law to execute

searches, to seize evidence, or to make arrests for violations of Federal law. 28 U.S.C. 2680(h).

(c) *Government employees*—(1) *General.* "Employee of the Government," defined at 28 U.S.C. 2671, includes officers or employees of any Federal agency, members of the U.S. military or naval forces, and persons acting on behalf of a Federal agency in an official capacity.

(2) *Government contractors.* Government (also referred to as independent) contractors, are those individuals or businesses who enter into contracts with the United States to provide goods or services. Because the definition of "Federal agency," found at 28 U.S.C. 2671, specifically excludes "any contractor with the United States," the United States is generally not liable for the negligence of Government contractors. There are, however, three limited exceptions to the general rule, under which a cause of action against the United States has been found to exist in some jurisdictions. They are:

(i) Where the thing or service contracted for is deemed to be an "inherently dangerous activity";

(ii) where a nondelegable duty in the employer has been created by law; or,

(iii) where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner.

(3) *Employees of nonappropriated-fund activities.* Nonappropriated-fund activities are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be "arms" of the Federal government. These entities operate from self-generated funds, rather than from funds appropriated by Congress. Examples include Navy and Marine Corps Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a nonappropriated-fund activity not located in a foreign country, acting within the scope of employment, is an act or omission committed by a Federal employee and will be handled in accordance with the FTCA.

(d) *Scope of employment.* "Scope of employment" is defined by the law of

respondeat superior (master and servant) of the place where the act or omission occurred. Although 28 U.S.C. 2671 states that acting within the scope of employment means acting in the line of duty, the converse is not always true. For administrative purposes, a Government employee may be found “in the line of duty,” yet not meet the criteria for a finding of “within the scope of employment” under the law of the place where the act or omission occurred.

§ 750.24 Statutory/regulatory authority.

The statutory provisions of the Federal Tort Claims Act (FTCA) are at 28 U.S.C. 1346(b), 2671–2672, and 2674–2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 CFR part 14. If the provisions of this section and the Attorney General’s regulations conflict, the Attorney General’s regulations prevail.

§ 750.25 Scope of liability.

(a) *Territorial limitations.* The FTCA does not apply to any claim arising in a foreign country. 28 U.S.C. 2680(k) and *Beattie v. United States*, 756 F.2d 91 (D.C. Cir. 1984).

(b) *Exclusions from liability.* Statutes and case law have established categories of exclusions from FTCA liability.

(1) *Statutory exclusions.* Section 2680 of Title 28 lists claims not cognizable under the FTCA. They include:

(i) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(ii) Admiralty claims under 46 U.S.C. 741–752 or 781–790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under part 752 of this Chapter;

(iii) Claims arising from intentional torts, except those referred to in § 750.23(b);

(iv) Claims arising from the combat activities of the military or naval

forces, or the Coast Guard, during time of war.

(2) *Additional claims not payable.* Although not expressly statutorily excepted, the following types of claims shall not be paid under the FTCA:

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty. Compare *United States v. Johnson*, 481 U.S. 681 (1987); *Feres v. United States*, 340 U.S. 135 (1950) with *Brooks v. United States*, 337 U.S. 49 (1949);

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations, 32 CFR part 751;

(iii) Any claim by employees of non-appropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated in 32 CFR part 756;

(iv) Any claim for personal injury or death covered by the Federal Employees’ Compensation Act (5 U.S.C. 8116c);

(v) Any claim for personal injury or death covered by the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 905 and 5 U.S.C. 8171);

(vi) That portion of any claim for personal injury or property damage, caused by the negligence or fault of a Government contractor, to the extent such contractor may have assumed liability under the terms of the contract (see *United States v. Seckinger*, 397 U.S. 203 (1969) and § 750.23(c)(2);

(vii) Any claim against the Department of the Navy by another Federal agency. Property belonging to the Government is not owned by any one department of the Government. The Government does not reimburse itself for the loss of its own property except where specifically provided for by law; and

(viii) Any claim for damage to a vehicle rented pursuant to travel orders.

§ 750.26 The administrative claim.

(a) *Proper claimant.* See § 750.5 of this part.

(b) *Claim presented by agent or legal representative.* A claim filed by an agent or legal representative will be filed in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of the individual's authority to file a claim on behalf of the claimant.

(c) *Proper claim.* A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. The Attorney General's regulations specify that the claim be filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in a determination that the administrative claim is incomplete. A suit may be dismissed on the ground of lack of subject matter jurisdiction based on claimant's failure to present a proper claim as required by 28 U.S.C. 2675(a).

(d) *Presentment.* A claim is deemed presented when received by the Navy in proper form. A claim against another agency, mistakenly addressed to or filed with the Navy shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. Claims officers shall coordinate with all other affected agencies and ensure a lead agency is designated. 28 CFR 14.2.

§ 750.27 Information and supporting documentation.

(a) *Proper documentation.* Depending on the type of claim, claimants may be required to submit information, as follows:

(1) *Death.* (i) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

(ii) Decedent's employment or occupation at time of death, including

monthly or yearly earnings and the duration of last employment;

(iii) Full names, addresses, birth dates, relationship, and marital status of the decedent's survivors, including identification of survivors dependent for support upon decedent at the time of death;

(iv) Degree of support provided by decedent to each survivor at time of death;

(v) Decedent's general physical and mental condition before death;

(vi) Itemized bills for medical and burial expenses;

(vii) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between injury and death; and,

(viii) Any other evidence or information which may affect the liability of the United States.

(2) *Personal injury.* (i) A written report by attending physician or dentist on the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, any any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by any Federal agency. Upon written request, a copy of the report of the examining physician shall be provided;

(ii) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments of such expenses;

(iii) A statement of expected expenses for future treatment;

(iv) If a claim is made for lost wages, a written statement from the employer itemizing actual time and wages lost;

(v) If a claim is made for lost self-employed income, documentary evidence showing the amount of earnings actually lost; and

(vi) Any other evidence or information which may affect the liability of the United States for the personal injury or the damages claimed.

(3) *Property damage.* (i) Proof of ownership;

(ii) A detailed statement of the amount claimed for each item of property;

(iii) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs;

(iv) A statement listing date of purchase, purchase price, and salvage value where repair is not economical; and

(v) Any other evidence or information which may affect the liability of the United States for the property damage claimed.

(b) *Failure to submit necessary documentation.* If claimant fails to provide sufficient supporting documentation, claimant should be notified of the deficiency. If after notice of the deficiency, including reference to 28 CFR 14.4, the information is still not supplied, two follow-up requests should be sent by certified mail, return receipt requested. If after a reasonable period of time the information is still not provided, the appropriate adjudicating authority should deny the claim.

§ 750.28 Amendment of the claim.

A proper claim may be amended at any time prior to settlement, denial, or the filing of suit. An amendment must be submitted in writing and must be signed by the claimant or duly authorized agent or legal representative. No finally denied claim for which reconsideration has not been requested under § 750.31 may be amended.

§ 750.29 Investigation and examination.

Subpart A of this part requires an investigation for every incident that may result in a claim against or in favor of the United States. Where a previously unanticipated claim is filed against the Government and an investigation has not already been conducted, the appropriate claims officer shall immediately request an investigation. See subpart A of this part for specific action required by an adjudicating authority.

§ 750.30 Denial of the claim.

Final denial of an administrative claim shall be in writing and shall be sent to the claimant, his duly authorized agent or legal representative by certified or registered mail, with re-

turn receipt requested. The notification of final denial shall include the reasons for the denial. The notification shall include a statement informing the claimant of his right to file suit in the appropriate Federal district court not later than 6 months after the date of the mailing of the notification. 28 CFR 14.9(a).

§ 750.31 Reconsideration.

(a) *Request.* Prior to the commencement of suit and prior to the expiration of the 6-month period for filing suit, a claimant or his duly authorized agent or legal representative may present a request for reconsideration to the authority who denied the claim. The request shall be in writing and shall state the reasons for the requested reconsideration. A request for reconsideration is presented on the date it is received by the DON. 28 CFR 14.9(b).

(b) *Proper basis.* A request for reconsideration shall set forth claimant's reasons for the request, and shall include any supplemental supporting evidence or information. Any writing communicating a desire for reconsideration that reasonably appears to have been presented solely for the purpose of extending the statutory period for filing suit, shall not be treated as a request for reconsideration. Claimant or claimant's authorized representative shall be notified promptly that the writing is not considered a proper request for reconsideration.

(c) *Effect of presentment of request.* The presentment of a proper request for reconsideration starts a new 6-month period for the DON to act on the request to reconsider. The claimant may not file suit until the expiration of the new 6-month period, or until after the date of mailing of the final denial of the request. Final denial of a request for reconsideration shall be accomplished in the manner prescribed in § 750.30. 28 CFR 14.9(b).

§ 750.32 Suits under the Federal Tort Claims Act (FTCA).

(a) *Venue.* Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred. 28 U.S.C. 1402.

(b) *Jury trial.* There is no right to trial by jury in suits brought under the FTCA. 28 U.S.C. 2402.

(c) *Settlement.* The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA. 28 U.S.C. 2677.

(d) *Litigation support*—(1) *Who provides.* The adjudicating authority holding a claim at the time suit is filed shall be responsible for providing necessary assistance to the Department of Justice official or U.S. Attorney responsible for defending the Government's interests.

(2) *Litigation report.* A litigation report, including a legal memorandum emphasizing anticipated issues during litigation, shall be furnished to the appropriate Department of Justice official or U.S. Attorney.

(3) *Pretrial discovery.* Complete and timely responses to discovery requests are vital to the effective defense of tort litigation. Subject to existing personnel and resources available, appropriate assistance shall be provided. The Judge Advocate General should be notified promptly when special problems are encountered in providing the requested assistance.

(4) *Preservation of evidence.* Tort litigation is often accomplished over an extended period of time. Every effort shall be made to preserve files, documents, and other tangible evidence that may bear on litigation. Destruction of such evidence, even in accordance with routine operating procedures, undermines defense of a case.

§ 750.33 Damages.

(a) *Generally.* The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs. 28 U.S.C. 1346(b).

(b) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages. 28 U.S.C. 2674.

(c) *Setoff.* The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including CHAMPUS payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101-800) must be considered. *Brooks v. United States*, 337 U.S. 49 (1949).

(d) *Suit.* Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless based on newly discovered evidence. 28 U.S.C. 2675(b). Plaintiff must prove the increased demand is based on facts not reasonably discoverable at the time of the presentment of the claim or on intervening facts relating to the amount of the claim.

§ 750.34 Settlement and payment.

(a) *Settlement agreement*—(1) *When required.* A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either:

- (i) Settled for less than the full amount claimed, or
- (ii) The claim was not presented on a Standard Form 95.

(2) *Contents.* Every settlement agreement must contain language indicating payment is in full and final settlement of the applicable claim. Each settlement agreement shall contain language indicating acceptance of the settlement amount by the claimant, or his agent or legal representative, shall be final and conclusive on the claimant, or his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose conduct gave rise to the claim, by reason of the same subject matter. 28 CFR 14.10(b). In cases where partial payment will benefit both claimant and the Government, such as payment for property

damage to an automobile, the settlement agreement shall be tailored to reflect the terms of the partial settlement. All settlement agreements shall contain a recitation of the applicable statutory limitation of attorneys fees. 28 U.S.C. 2678.

(b) *DON role in settlement negotiations involving the U.S. Attorney or DOJ.* Agency concurrence is generally sought by the Department of Justice or U.S. Attorney's office prior to settlement of suits involving the DON. Requests for concurrence in settlement proposals shall be referred to the appropriate DON adjudicating authority with primary responsibility for monitoring the claim. Adjudicating authorities shall consult with the Judge Advocate General concerning proposed settlements beyond their adjudicating authority.

(c) *Payment of the claim—(1) Statutory authority.* Pursuant to 28 U.S.C. 2672 and in accordance with 28 CFR 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States, may compromise or settle any claim filed against the Navy under the FTCA, provided any award, compromise, or settlement by the Navy in excess of \$100,000.00 may be effected only with the prior written approval of the Attorney General or designee. Title 28 CFR 14.6 requires consultation with the Department of Justice prior to compromise or settlement of a claim in any amount when:

- (i) A new precedent or a new point of law is involved;
- (ii) A question of policy is or may be involved;
- (iii) The United States is or may be entitled to indemnity or contribution

from a third party and the agency is unable to adjust the third party claim;

(iv) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$100,000.00; or

(v) The DON is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

(2) *Specific delegation and designation—(i) Payment authority.*

Delegated and designated authority	Federal Tort Claims Act
Judge Advocate General	Unlimited.
Deputy Judge Advocate General	Unlimited.
Assistant Judge Advocate General (General Law).	Unlimited.
Deputy Assistant Judge Advocate General (Claims and Tort Litigation) and Deputy Division Director.	\$100,000.00.
Head, Federal Tort Claims Branch, Claims and Tort Division, OJAG.	\$50,000.00.
Commanding Officers of Naval Legal Service Offices; Officers in Charge of Naval Legal Service Office Detachments when Specifically Designated by Cognizant Commanding Officers of Naval Legal Service Offices.	\$25,000.00.

Any payment of over \$100,000.00 must be approved by the Department of Justice. In addition, the authority to deny Federal Tort Claims is double the Federal Tort Claims Act approval authority shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) may deny Federal Tort Claims in any amount.

(ii) *Territorial responsibility.*

Responsible command	Territory
NAVLEGSVCOFF Newport	Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut.
NAVLEGSVCOFF Philadelphia	Pennsylvania, New Jersey, Ohio, and New York.
NAVLEGSVCOFF Washington, DC ..	Maryland, the District of Columbia, and Northern Virginia area (zip 220-223).
NAVLEGSVCOFF Norfolk	Virginia (less Northern Virginia area—zip 220-223), and West Virginia, North Carolina (counties of Currituck, Camden, Pasquotonk, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, and Onslow only), Bermuda, Iceland, Greenland, Azores, The Caribbean, The Republics of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama, Belize, Colombia, Venezuela, Guyana, French Guiana, Surinam, Brazil, Bolivia, Paraguay, Uruguay, Argentina, and all Atlantic and Arctic Ocean areas and islands not otherwise assigned.
NAVLEGSVCOFF Charleston	North Carolina (less counties of Currituck, Camden, Pasquotonk, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, Onslow), and Georgia (less Counties of Charlton, Camden, and Glynn).
NAVLEGSVCOFF Jacksonville	That portion of Florida east of the western boundaries of Gadsen, Liberty, and Franklin Counties and Georgia (counties of Charlton, Camden, and Glynn).

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Responsible command	Territory
NAVLEGSVCOFF Pensacola	Florida [Pensacola/Panama City area (zip 324–325)], Alabama, Louisiana and Mississippi (that portion south of Washington, Humphreys, Holmes, Attala, Winston, and Noxubee Counties, and that portion of the Gulf of Mexico East of longitude 90 W).
NAVLEGSVCOFF Memphis	Missouri, Tennessee, Kentucky, Arkansas, and that portion of Mississippi north of the southern boundaries of Washington, Humphreys, Holmes, Attala, Winston, and Noxubee Counties.
NAVLEGSVCOFF Great Lakes	North Dakota, South Dakota, Nebraska, Minnesota, Michigan, Iowa, Wisconsin, Illinois, and Indiana.
NAVLEGSVCOFF Corpus Christi	Texas.
NAVLEGSVCOFF San Diego	California (Imperial County, San Diego County, and that area included in Marine Corps Base, Camp Pendleton extending into Orange County, only), that portion of Mexico including and West of the States of Chihuahua, Durango, Nayarit, Jalisco, and Colima, Pacific Ocean areas and islands South of Latitude 45N and East of Longitude 135W, Ecuador, Peru, Chile, Arizona, New Mexico, Oklahoma, and Nevada (Clark County only).
NAVLEGSVCOFF Long Beach	That portion of California in Kern, Santa Barbara, Ventura, Los Angeles and Orange Counties (excluding Marine Corps Base, Camp Pendleton), Riverside, San Bernardino, and the China Lake Naval Weapons Station Center.
NAVLEGSVCOFF San Francisco	Northern California (Counties of San Luis Obispo, Kings, Tulare, Inyo, and all counties North thereof), Colorado, Nevada (less Clark County), Utah, and Kansas.
NAVLEGSVCOFF Puget Sound	Washington, Oregon, Idaho, Montana, Wyoming, and Alaska.
NAVLEGSVCOFF Pearl Harbor	Hawaii, including Midway and Pacific Island possessions serviced from Hawaii.
NAVLEGSVCOFF Mayport	Claims involving commands located at Naval Station, Mayport, Florida.
NAVLEGSVCOFF Guam	Guam, The Trust Territory of The Pacific Islands, The Republic of The Marshall Island, The Federated States of Micronesia and The Commonwealth of The Northern Marianas.
NAVLEGSVCOFF Yokosuka	Japan, Okinawa, Korea, that portion of the Eurasian Continent North of latitude 30N and East of longitude 60E, and those Pacific and Arctic Ocean areas and islands North of latitude 30N that are East of longitude 60E and West of longitude 170W.
NAVLEGSVCOFF Naples	Europe, the African Continent (excluding that portion thereof assigned to NLSO Subic Bay), the Eurasian Continent (excluding that portion thereof assigned to NLSO Yokosuka and NLSO Subic Bay), and the Mediterranean.
NAVLEGSVCOFF Subic Bay	Philippines, Hong Kong, Singapore, Diego Garcia, and unless otherwise specified, all Pacific and Indian Ocean areas and islands located between longitude 135E and longitude 15E; Ethiopia, Somalia, Kenya, Tanzania, Mozambique, Swaziland, Lesotho, and South Africa; that portion of the Eurasian Continent South of latitude 30N and East of longitude 60E.

(3) *Funding.* Claims approved for \$2,500.00 or less are paid from DON appropriations. Claims approved in excess of \$2,500.00 are paid from the judgment fund and must be forwarded to the United States General Accounting Office (GAO) for payment. 28 CFR 14.10(a). Claims arising out of the operation of nonappropriated-fund activities and approved for payment shall be forwarded to the appropriate nonappropriated-fund activity for payment.

§ 750.35 Attorney's fees.

Attorney's fees are limited to 20 percent of any compromise or settlement of an administrative claim, and are limited to 25 percent of any judgment rendered in favor of a plaintiff, or of any settlement accomplished after suit is filed. These amounts are to be paid out of the amount awarded and not in addition to the award. 28 U.S.C. 2678.

§ 750.36 Time limitations.

(a) *Administrative claim.* Every claim filed against the United States under the FTCA must be presented in writing within 2 years after the claim accrues. 28 U.S.C. 2401(b). Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act giving rise to the claim. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented included.

(b) *Amendments.* Upon timely filing of an amendment to a pending claim, the DON shall have 6 months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. 2675(a) shall not accrue until 6 months after the presentation of an amendment. 28 CFR 14.2(c).

(c) *Suits.* A civil action is barred unless suit is filed against the United